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SUPREME COURT, U.S.

No. 06-1716

IN THE

Supreme Court of the United States

SHIRLEY A. ROCKSTEAD, *et al.*,

Petitioners,

v.

CITY OF CRYSTAL LAKE, ILLINOIS,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether Petitioners have presented compelling reasons to grant the Petition, where the Seventh Circuit's Opinion affirming the District Court's analysis under *Williamson County* does not conflict with the decisions of this Court or a Court of Appeals, and where Petitioners do not claim that the Seventh Circuit's ruling implicates an important federal question that has not been settled by this Court.

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INTRODUCTION

The Petitioners have presented no compelling reasons for their Petition for a Writ of *Certiorari* to be granted ("Petition"). *See* Sup. Ct. R. 10. Specifically, the Petitioners fail to demonstrate that the Seventh Circuit's April 10, 2007, Opinion ("Opinion") is in conflict with a decision of this Court or another Court of Appeals or that the Seventh Circuit decided an important federal question that has not been settled by this Court. *See* Sup. Ct. R. 10(a)-(c). In fact, the Petitioners have shown in their Petition that the District Court's dismissal of their federal claim was in accordance with this Court's decisions in *Williamson County Reg'l Planning Commission v. Hamilton Bank of Johnson City*, 473 U.S. 172 (1985) and *San Remo Hotel v. County of San Francisco*, 545 U.S. 323 (2005). Therefore, the Petition should be denied[1].

The Petitioners claim that they seek reconsideration of *Williamson County's* state litigation rule based on the concurrence of Chief Justice Rehnquist in this Court's unanimous decision in *San Remo Hotel* in which the Chief Justice stated in concurrence that, "I believe the Court should reconsider whether Plaintiff asserting a Fifth Amendment

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[1] The Petitioners note that *McNamara v. City of Rittman, Ohio* (No. 06-1481) presently pending for *Certiorari* before this Court presents related questions. The questions presented in that case are separate and distinct from those presented in this matter in that Ohio law did not initially provide a state procedure for obtaining compensation but during the pendency of that matter made such a procedure available thereby creating an issue of which claims were ripe and which may be barred by the Ohio Statute of Limitations. No such issue is present in this case as Illinois has always provided a state procedure for obtaining compensation.

takings claim based on the final decision of a state or local government entity must seek compensation in state courts." *Id.* at 352.

As *Certiorari* is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law, this case presents no compelling reasons for *Certiorari* as none are alleged, rather the Petitioners request that this Court re-examine properly applied rules of law. (See Sup. Ct. R. 10).

This case does not present the opportunity for re-examination alluded to by Chief Justice Rehnquist in *San Remo* because a final state court decision has not been rendered in this case. Although the Petitioners' federal claim was filed as a § 1983 Fifth Amendment Just Compensation Action, the Petitioners never filed their § 1983 claim in state court despite the pendency of the Illinois. Thus, although Justice Rehnquist in *San Remo* suggested that the Court might reconsider Fifth Amendment takings claims based on a final decision of a state or local government entity, no such final decision has been made.

The Petitioners also claim that *Williamson County* should be reconsidered because, when coupled with § 1738, it prevents the Petitioners from bringing a Fifth Amendment takings claim in Federal Court. No compelling reasons are advanced by the Petitioners beyond the mere assertion that *Williamson County's* requirement that a Fifth Amendment § 1983 takings claim requires exhaustion of all state law remedies prevents an owner from subsequently bringing the same action in federal court. The relief sought by the Petitioners here is the very same as that which was considered and denied by this Court in *San Remo.*

The next claim is that *Williamson County's* state litigation requirements are suspect, in that they present a "Catch 22", because of the interaction between the state litigation requirement and § 1738. Here again the Petitioners present no compelling reasons for granting their Petition, and they fail to cite any instances in which Appellate Courts are in conflict with each other.

Finally, the Petitioners assert that the lower courts are bound to follow controlling state law decisions, which the Petitioners admit would bar their claim of inverse condemnation. Therefore, the Petitioners assert that the lower courts should have held that the procedure for compensation under Illinois law was unavailable, thereby making their federal claim ripe immediately. As Judge Posner stated in the Seventh Circuit's opinion, because the remedy available to the Petitioners is a state common law doctrine which judges might elect to change, and the Illinois Supreme Court has not addressed this matter since 1948, it is premature to conclude that the Illinois Supreme Court would deny relief on the basis of a mechanical application of the "temporary accumulations" doctrine.

In summary, the Petitioners present no compelling reasons for the grant of their Writ of *Certiorari* as their Petition addresses settled issues which do not merit this Court's attention. The assertion that the state litigation rule of *Williamson County* should be re-examined merely reiterates an issue decided by this Court as recently as 2005 in the *San Remo* case. In fact, their only assertion of error in the Courts below concerns the claim that the District Court and the Seventh Circuit Appellate Court erred in failing to hold that state compensation was unavailable. This claim is readily disposed of, since the Petitioners admit that they

sought relief from the Illinois state courts under a claim of inverse compensation under the Just Compensation Clause of Article I, Section 15 of the Illinois Constitution. Therefore, the clear letter of the law in Illinois provides a procedure by which the Petitioners may seek compensation for the taking of their land. Because the Petitioners have failed to carry their substantial burden of demonstrating that there are any compelling reasons for the Court to grant their Petition, the Petition should be denied.

STATEMENT OF THE CASE

Procedure

This matter dates back to a state court action initially filed in 1994. At that time, the Petitioners, Shirley A. Rockstead and Carol J. Henderson, alleged certain actions of the Respondent, the City of Crystal Lake, caused flooding on their property. The Petitioners argued that this damage constituted a taking without just compensation in violation of the Illinois Constitution. On July 27, 2005, the Circuit Court of McHenry County, Illinois, granted partial Summary Judgment in favor of Crystal Lake on the Petitioners' takings claims. The Court ruled that the City's actions, even when considering twelve years worth of evidence in a light most favorable to the Petitioners, did not constitute a taking. The state court found that occasional flooding, absent a showing of a permanent accumulation of surface water on the Petitioners' property, was insufficient to establish a physical taking. Because the Petitioners were unable to establish a permanent accumulation of surface water on their property, the court held that the Petitioners' attempt to compel the City to institute eminent domain proceedings was without merit. However, because this ruling was interlocutory and because

other claims and parties were named in the state litigation, the Petitioners could have sought leave to appeal this ruling under Illinois Supreme Court Rule 304(a) but failed to do so.

On August 8, 2005, the Petitioners filed their Complaint with the United States District Court for the Northern District of Illinois alleging an impermissible taking in violation of 42 U.S.C. § 1983 and § 1988, as well as the Fifth and Fourteenth Amendments to the United States Constitution. In their Complaint, the Petitioners alleged that they were entitled to federal court relief because all remaining state procedures to obtain recovery on their takings claims were inadequate and futile. Crystal Lake then filed its Motion to Dismiss arguing that the District Court lacked subject matter jurisdiction over the takings claim because the case was not yet ripe for Federal District Court review. Crystal Lake argued that in failing to assert their statutory right to appeal the partial summary judgment to the Appellate Court for the Second District of Illinois, the Petitioners failed to utilize all methods of redress available from the State of Illinois. Crystal Lake argued, therefore, that under the steadfast ruling of *Williamson County*, the Petitioners' complaint was premature.

The United States District Court for the Northern District of Illinois granted Crystal Lake's Motion to Dismiss pursuant to 12(b)(1) of the Federal Rules of Civil Procedure. In its written opinion, the District Court concluded that, pursuant to the U.S. Supreme Court's ruling in *Williamson County*, a plaintiff must exhaust all remedies made available by the state prior to seeking redress from the Courts of the United States. (Pet. App. at 20a-21a). The District Court found that the Petitioners could still [illegible] relief in the Illinois Appellate

Court. The Court ruled, that the Petitioners' Complaint would not ripen until the Second District affirmed the McHenry County Court's decision granting Crystal Lake's Motion for partial Summary Judgment. (Pet. App. at 20a-25a).

On October 31, 2006, the Seventh Circuit heard arguments on the Petitioners' appeal and issued a subsequent written opinion on April 10, 2007 affirming the judgment of the District Court in dismissing the Petitioners' federal cause of action as not ripe. The Seventh Circuit held that because these issues involve a common law doctrine and the Illinois Supreme Court has not visited the issue since 1948, it would be premature to conclude that an Illinois Appellate Court would deny relief to the Petitioners. (Pet. App. at 7a). Because the state court ruling was based on Illinois case law, the Petitioners need only distinguish that case law on appeal. Therefore, the Seventh Circuit held that the Petitioners did not fit within the unavailability exception of *Williamson County* and agreed with the District Court that because the Petitioners had not appealed the adverse state court ruling it cannot be conclusively determined that resort to the Illinois appellate system would be futile. Therefore, it cannot be said that the Petitioners have exhausted their state court remedies as required under this Court's ruling in *Williamson County.* This appeal followed.

Factual Background

The Petitioners, Shirley Rockstead and Carol Henderson, are the owners of property located in McHenry County, Illinois, a portion of which lies in the City of Crystal Lake. The property is undeveloped and zoned for industrial use. The City of Crystal Lake is a municipal corporation that owns and maintains real property, including a sewage disposal plant

and storm water detention ponds, which lies adjacent to and contiguous to the north and east sides of the Petitioners' property.

In 1968, Crystal Lake officials entered into a license agreement with Union Pacific Railroad, owners of a right-of-way running in a northeast-southwest direction to the west of the Petitioners' property. In accordance with the license agreement, the City was permitted to, and did, construct and maintain a pipeline running along the railroad's right-of-way, next to the Petitioners' property. The Petitioners allege that construction of this pipeline resulted in an obstruction of the natural flow of water from their property.

In 1994, the Petitioners instituted a cause of action complaining that Crystal Lake, in undertaking to build pipelines and other structures on Crystal Lake's own property, damaged the Petitioners' property. Specifically, the Petitioners claimed that building these public improvements caused water to drain toward, rather than away from, their land. They alleged that this change of flow lead to flooding, thereby converting their property to "useless wetlands."[2] The Petitioners filed their Complaint seeking damages at law,

[2] Although the Petitioners continue to claim that their property is now "valueless wetlands," the property remains listed for sale, and was subject to a $515,000 offer two years ago and a $900,000 offer this summer. In addition, although the Army Corps of Engineers initially classified the Petitioners' land as "wetlands," following this Court's ruling in *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers*, 531 U.S. 159, 121 S.Ct. 675 (2001), that classification was determined to be outside of the Army's jurisdiction by the Chicago district of the Army Corps of Engineers in 2002. Therefore, at present, there is no classification related to saturation attached to the Petitioners' land that restricts its use or sale.

injunctive relief, and a Writ of Mandamus asking that the McHenry County Court institute compelled eminent domain proceedings.

In accordance with the Illinois procedure for inverse condemnation, the Petitioners sought a writ of mandamus under Article I, Section 15 of the Illinois Constitution and under the Illinois Eminent Domain provisions of the Illinois Code of Civil Procedure, 735 ILCS § 5/7-101 *et seq.* However, after extensive discovery, the Petitioners were unable to establish that the property was flooded with permanent standing water, which according to Illinois case law, is a necessary component of a successful Illinois inverse condemnation action. See *People ex rel. Pratt v. Rosenfield* 399 Ill 247, 77 N.E.2d 697 (1948), *Luperini v. County of DuPage* 265 Ill.App.3d 84, 637.N.E.2d 1264 (2nd Dist. 1994).

Accordingly, on July 27, 2005, the McHenry County Court entered its Order On Motion For Partial Summary Judgment. The court held:

> "The Plaintiffs concede and, in fact, state that it was never their contention, that the Defendants have caused permanent standing water on their property." (Pet. App. at 35a).

The Court concluded that the Petitioners' claim was insufficient for an inverse condemnation action. Though other counts survived, the Court entered Judgment in the City of Crystal Lake's favor on the Petitioners' inverse condemnation counts.

The Petitioners never pursued their right to appeal the McHenry County Court's Order of Partial Summary Judgment in the Appellate Court for the Second District of Illinois. Rather, two weeks after the McHenry Court's Order, they filed suit in the U.S. District Court for the Northern District of Illinois. The Petitioners' Federal Complaint alleged that:

> "After 11 years of fruitless litigation in the Illinois state courts, plaintiffs have fully exhausted their state law remedies and it is apparent that the City and State will not pay them for just compensation. Therefore, plaintiffs have exhausted their state remedies which in any event are inadequate and further resort to them would be completely futile."

In lieu of answering the Petitioners' Complaint, Crystal Lake filed its Motion to Dismiss under 12(b)(6) of the Federal Rules of Civil Procedure. In its Motion to Dismiss, Crystal Lake argued that under *Williamson County*, the Petitioners failed to utilize all methods of recovery available by the State of Illinois, and therefore their takings claim was not ripe for review. The Petitioners responded that because Illinois law was so firmly entrenched in the notion that intermittent flooding is not a taking, any appeal would have been futile.

The United State District Court for the Northern District of Illinois concluded that, at the time the Petitioners filed their federal complaint, their case more appropriately belonged in the Illinois state court. In ruling on Crystal Lake's Motion to Dismiss, therefore, the District Court found that, pursuant to 12(b)(1), it was compelled to dismiss the Petitioners' Complaint because it lacked subject matter jurisdiction over the claim. The Court reasoned that, pursuant

to the United States Supreme Court's ruling in *Williamson County*, when a claimant fails to exhaust all state remedies, any federal claim that follows is not yet ripe for review. (Pet. App. at 20a-21a, 26a).

The Petitioners then appealed to the United States Court of Appeals for the Seventh Circuit. In affirming the decision of the District Court, the Seventh Circuit correctly applied the *Williamson County* Rule, holding that the Petitioners had failed to exhaust all state law remedies and therefore their federal claim was not ripe for review. Although the Petitioners argued to the Seventh Circuit that they fall within the exception to *Williamson County* because the Illinois procedure for inverse condemnation should be deemed "unavailable" because the Illinois case law appears to be adverse to the successful litigation of their claim, the Seventh Circuit held that one cannot conclude that resort to the Illinois appellate system would be futile since the Illinois courts have not re-visited the issue in almost fifty years. Furthermore, because the state court ruling was based on case law, the Seventh Circuit observed that the Petitioners need only distinguish that case law to overcome the McHenry County Circuit Court's grant of partial summary judgment. This appeal followed.

REASONS FOR DENYING THE PETITION

The decisions below do not conflict with the decisions of this Court or any Court of Appeals, nor do they implicate a federal question that has not been decided by this Court. Accordingly, the Petitioners have not sustained their burden of demonstrating any "compelling reasons" for the Petition to be granted under Supreme Court Rule 10.

I. The District Court Properly Dismissed the Petitioners' Claims Because the Petitioners Failed to Exhaust Available State Remedies as Required under Williamson County and San Remo Hotel.

In order to bring an inverse condemnation claim in Federal Court pursuant to § 1983 and the Fifth Amendment, a Plaintiff must first exhaust all avenues available in the state court to recover for allegedly damaged property. *Williamson County*, 194. In *Williamson County*, this Court found that the Plaintiff's claim was not ripe for federal review because, in seeking compensation, the claimant did not utilize all procedures made available by the state prior to seeking federal redress. *Id.* In so ruling, the Supreme Court declared this a new "exhaustion requirement" for takings claims brought against a state, reasoning:

> "If a state provides an adequate procedure for seeking just compensation, the property owner cannot claim a violation of the just compensation clause until it has used the procedure and been denied just compensation." *Id.* at 195.

The *Williamson County* state exhaustion requirement was reaffirmed by this Court in a similar context dealing with the effect of the exhaustion requirement and the full faith and credit clause as recently as 2005 in the case of *San Remo Hotel v. City and County of San Francisco, California*, 454 U.S. 323 (2005).

Just as does Tennessee in the *Williamson County* case, Illinois provides a procedure for seeking just compensation from a governmental entity in the context of a takings claim. (See Illinois Inverse Condemnation Statute, 735 ILCS 5/7-

101). In this case, the Petitioners initiated the proceeding of an Illinois inverse condemnation action in order to seek redress under the Illinois Constitution. However, the Petitioners abandoned these proceedings once the city prevailed on its motion for partial summary judgment in state court. Less than two weeks after that ruling, the Petitioners filed their complaint in Federal Court, rather than seeking leave to appeal the adverse ruling of the Circuit Court of McHenry County. The Petitioners justify this course of action by arguing that, because they cannot recover under Illinois case law, it would be futile to proceed further and therefore the Illinois procedure is unavailable to them.

Because Illinois provides for a state inverse condemnation proceeding and because the Petitioners have not appealed the denial of their state inverse condemnation claim in the Illinois court, the Petitioners have not exhausted all available means of redress provided by Illinois. As a result, the Petitioners' federal claim is not ripe for a determination under the rule expressed in *Williamson County.* Therefore, the District Court correctly held that it lacked subject matter jurisdiction over this case.

Furthermore, as held by the District Court and affirmed by the Seventh Circuit Court of Appeals, the existence of unfavorable case law does not render an appeal futile, nor does it constitute the constructive unavailability of an Illinois inverse condemnation procedure. As observed by the Seventh Circuit, if a statute or constitutional provision provided that inverse condemnation procedure cannot be used when intermittent flooding is at issue, recourse to state remedies would be pointless and not required. (Pet. App. at 4a). However, when as in this case, the denial of the Petitioners' claim rests on state common law, the Petitioners need only

distinguish the controlling case law in order to prevail on appeal. Indeed, the Petitioners do not pursue here their argument that state court relief is unavailable, only not yet resolved.

Therefore, because the Petitioners may appeal the state court grant of summary judgment against them but have chosen not to do so, instead filing a § 1983 Claim in federal court, it cannot be said that the Petitioners have met the requirement enunciated by this Court in *Williamson County.* Hence, the District Court's dismissal of the Petitioners' federal takings claim was consistent with this Court's decisions in *Williamson County* and *San Remo Hotel* and does not present any reason for this Court to now revisit those issues.

II. *This Courts' Holding in San Remo Hotel Expressly Denied the Petitioners' Argument that an Exception to § 1738 Should be Allowed for Takings Claims.*

Although the Petitioners phrase their argument that *Williamson County's* exhaustion requirement when viewed in combination with 28 U.S.C. § 1738 precludes the subsequent filing of a federal takings claim in new phraseology, the Petitioners are asking this Court to create an exception to Section 1738 in takings claims cases. This issue is identical to that addressed and specifically denied by this Court in *San Remo Hotel.*

In *San Remo Hotel*, this Court granted *certiorari* to determine whether an exception should be given to § 1738 in takings claims to allow for federal review once a state court has denied compensation. At the time, the decision by the Ninth Circuit Court of Appeals holding that federal review

of a takings claim was not ripe conflicted with that of the Second Circuit Court of Appeals decision in *Santini v. Connecticut Hazardous Waste Management Service*, 342 F3d 118 (2nd Cir. 2003). Therefore, unlike the current situation, when *San Remo* was reviewed in 2005, there existed between the Circuits a disagreement of the application of this law.

Indeed, the Petitioners' argument in *San Remo* is strikingly similar to that advanced by the Petitioners at bar. In *San Remo*, the court observed:

> "The essence of the Petitioners' argument is as follows: because no claim that a state agency has violated the federal takings clause can be heard in federal court until the property owner has "been denied just compensation" through an available state compensation procedure, federal courts [should be] required to disregard the decision of the state court in order to ensure that federal takings claims can be considered on the merits in . . . federal court." *San Remo* 545 U.S. at 338.

While the Petitioners in *San Remo* complained of the same procedural situation as presented here, namely that litigation of their federal takings claim in state court barred them from subsequently bringing that claim in federal court, this Court held that

> "there is, in short no reason to believe that Congress intended to provide a person claiming a federal right an unrestricted opportunity to re-litigate an issue an issue already decided in state court simply because the issue arose in a state proceeding in which he would rather not have been engaged at all."

San Remo, at 343. The Court further reasoned that the argument that an exception should be made to § 1738 for takings claims fails because it assumes that courts may create exceptions to § 1738 whenever deemed appropriate. "Such a fundamental departure from traditional rules of preclusion, enacted into federal law, can be justified only if plainly stated by Congress." *San Remo*, at 344. "An exception to § 1738 will not be recognized unless a later statute contains an expressed or implied partial repeal. Congress must clearly manifest its intent to depart from § 1738." *San Remo*, 344-345.

The majority opinion in *San Remo* noted that the requirement that the property owners must seek compensation through state procedures does not preclude a state court from simultaneously deciding the property owner's claim under state law, and a claim that, in the alternative, the denial of the compensation would violate the Fifth Amendment of the Federal Constitution. *Id.* 346. Because of this juxposition, the Court noted that most of the cases in takings jurisprudence appear before this Court on *certiorari* from state courts of last resort. *Id.*, 347.

The concurrence of Chief Justice Rehnquist joined by Justices O'Connor, Kennedy, and Thomas upon which the Petitioners place their hope for the grant of this Petition concludes, along with the remainder of the Court, that there is no basis to exempt takings claims from § 1738 absent express direction by Congress. *Id.* 348. The Chief Justice noted that he believed the Court should reconsider whether plaintiffs asserting a Fifth Amendment takings claim based on the final decision of a state or local government entity should first seek compensation in state court. *Id.* 352.

Despite the Petitioners' contention that this is an opportunity to re-examine the state litigation requirement of *Williamson County*, in the present case there has been no final state decision as the Petitioners failed to seek leave to appeal the Circuit Court of McHenry County's grant of summary judgment against their inverse condemnation claim and instead filed a § 1983 claim in federal court. Thus, the final decision sought to be re-examined by Chief Justice Rehnquist in concurrence in *San Remo* has not been rendered in this case as the remainder of the Petitioners' claims are still pending in state court.

III. Illinois Inverse Condemnation Law is Not so Firmly Entrenched that Any Attempt to Distinguish Based Upon Facts Should be Rendered Futile.

The Petitioners argue that because some judicial decisions are unfavorable to their takings claims the Petitioners may not win on appeal, and therefore pursuing an appeal would be futile. See generally *Luperini v. County of DuPage*, 265 Ill.App.3d 84, 637 N.E.2d 1264 (2nd Dist., 1994), *People exrel Pratt v. Rosenthal*, 399 Ill. 247, 251, 77 N.E.2d 697 (Ill. 1948). These cases hold that if a state's actions cause flooding on a land owner's property, the property owner is entitled to inverse condemnation proceedings only when the flooding causes permanent standing water on the property, leaving these land owners with simply a cause of action for damages or injunctive relief. *Luperini*, 637 N.E.2d at 1268.

The Petitioners argue that any attempt to distinguish their own case from these cases would be futile alleging that Illinois law absolutely bars the Petitioners from pursuing inverse condemnation as a remedy.

Notwithstanding the Seventh Circuit's observation that all the Petitioners need do is distinguish the present factual situation from those in the controlling case law on appeal, the Petitioners in the present matter have not brought their claims before the state court at all. Rather, they have filed this claim in federal court. As such, the Petitioners cannot conclusively derive a negative outcome for a claim not before or ruled upon by the state court as a reason for adducing the unavailability exception under *Williamson County.*

IV. *There is No Need to Reconsider Williamson County because it was Correctly Decided Under the Plain Text of the Fifth Amendment.*

The holding in *Williamson County* correctly follows the language of the Fifth Amendment which does not proscribe the taking of property, but rather prohibits its taking without just compensation. As noted in *Williamson County*, if the government has an adequate process for obtaining compensation and if resort to that process yields just compensation, then a property owner has no claim against the government for a taking. *Williamson County*, 194. Indeed, the Court in *Williamson County* recognized that if a state provides an adequate procedure for seeking just compensation, the property owner cannot claim a violation of the just compensation clause until using the procedure and being denied just compensation. *Id.* 195. Thus, no Constitutional violation occurs until just compensation has been denied. This Court in *Williamson County* recognized that the Fifth Amendment is satisfied by a reasonable and adequate provision for obtaining compensation once a taking has occurred. *Id.*

As the Fifth Amendment does not require compensation to be paid in advance of a taking but only that a procedure for compensation be made available once a taking has occurred, and a state's action in taking is not complete until the state fails to provide compensation, *Williamson County* is correctly applied when, as here, the takings claimant has yet to exhaust state remedies for compensation.

V. *Following the Requirements of Williamson County, a Section 1983 Fifth Amendment Takings Claim May be Heard in Federal Court.*

The Petitioners argue that due to the interaction of *William County's* state exhaustion requirement and § 1738, the result is that a claimant who brings a takings claim in state court and loses will be subsequently barred from bringing that claim in federal court by res judicata and/or collateral estoppel. This interaction however, does not preclude a claimant from presenting their § 1983 claim in federal court if they comply with the state exhaustion requirement of *Williamson County. San Remo*, 545 U.S., 346.

In this case, rather then assert their § 1983 claim in state court, the Petitioners advanced only a state inverse condemnation claim. When that was denied, the Petitioners filed their federal claim in District Court. Had the Petitioners asserted their § 1983 claim in state court, they could have sought redress through the Illinois appellate court procedure whereby an adverse ruling on their § 1983 claim by the Illinois Supreme Court could be appealed to this Court.

The Petitioners' argument that they did not advance a § 1983 takings claim in state court because the Illinois Supreme Court has adopted *Williamson County's* ripeness

rule in a takings context is without merit. The Petitioners cite *Beneficial Dev. Corp. v. City of Highland Park*, 161 Ill. 2d 321, 641 N.E. 2d 435 (Ill. 1994) for the proposition that the Illinois Supreme Court has adopted *Williamson County's* ripeness rule in a federal takings context thus precluding them from bringing a § 1983 claim in state court.

In *Beneficial Dev. Corp.*, the plaintiffs asserted on appeal that the City of Highland Park violated § 1983 by conditioning the issuance of a building permit to Beneficial. 641 N.E.2d at 438. Because Beneficial stipulated at trial that it never applied for the building permit, the Illinois Supreme Court ruled that Beneficial's § 1983 claim was premature and did not consider it further. *Id.* Beneficial's § 1983 claim that they were denied the issuance of a building permit did not involve a takings issue and the Illinois Supreme Court's determination not to consider it was essentially premised on Beneficial's own stipulation that they had not been damaged by the city's denial of a permit Beneficial never requested.

This is a far cry from the Petitioners' assertion that the Illinois Supreme Court adopted *Williamson County's* ripeness rule in a federal takings context. At most, the Illinois Supreme Court's view of § 1983 in *Beneficial* can be said to stand for the proposition that a § 1983 claim in general is premature when the basis for such a claim is shown not to have occurred. Thus, the Petitioners have failed to conclusively demonstrate that Illinois case law would prevent them from filing a § 1983 claim along with their state court claims in accordance with *San Remo.*

VI. *Acceptance of Petitioners' Invitation Could Yield Broad Undesirable Results.*

Beyond rejecting century-old precedent, acceptance of the Petitioners' invitation would yield numerous alleged state taking victims to inundate the federal courts with petitions seeking similar relief.

The near unanimous twenty-two (22) year old precedent set forth in *Williamson County* based upon precedents which go back more than a century has been uniformly applied countless times by the Federal courts. Overruling long-standing precedent is something that this Court traditionally avoids.

Further, the relief which the Petitioners here are seeking, would result in sending countless state land disputes into federal court without the benefit of state court review. Increased federal litigation and the attendant docket management is also a concern of this Court.

Reconsideration of *Williamson* would logically call for the reconsideration of the parallel Due Process line of cases discussed by this Court in *Williamson County* such as *Parratt v. Taylor*, 451 U.S. 527, 101 S.Ct. 1908 (1981) as well as those lines of authority requiring claimants against the federal government to pursue their remedy in the United States Court of Federal Claims. Should *certiorari* be granted on *Williamson*, these and multiple other established lines of precedent would logically become subject to reconsideration as well.

CONCLUSION

The Petitioners have not established any compelling reasons for this Court to grant the Petition. Therefore, Respondents respectfully request that the Petition be denied.

Respectfully Submitted,

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